

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

GARY ALLEN DARNELL,	§	
Institutional ID No. 0719408,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Civil Action No. 2:18-CV-142-D
	§	
CHRIS JOLLY, Police Chief of Memphis,	§	
TX, et al.,	§	
	§	
Defendants.	§	

ORDER AND ORDER OF RE-REFERENCE

After making an independent review of the pleadings, files, and records in this case, and the January 16, 2019 findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct in part. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted in part, and the following motions are denied: plaintiff's January 8, 2019 motion for leave to file motion in objection; plaintiff's January 8, 2019 motion in objection; and plaintiff's February 5, 2019 objections, attached to his February 5, 2019 motion for leave to request motion in objection.

Plaintiff's action against "Kilo," a police dog, is clearly frivolous, and the court adopts the magistrate judge's recommendation that the action against Kilo be dismissed with prejudice.

In his February 5, 2019 objections, plaintiff appears to request the opportunity to obtain discovery in order to establish that he has viable claims against defendant City of Memphis, Texas (the "City"). Without holding that plaintiff is entitled to any particular form of discovery at this time, the court nevertheless concludes that plaintiff's claims against the City should not be dismissed

with prejudice at this preliminary stage. Instead, plaintiff should be given an opportunity to file an amended complaint that is sufficient to withstand dismissal, if he can.

Accordingly, the court adopts in part the January 16, 2019 findings, conclusions, and recommendation of the magistrate judge, and it in part re-refers this matter to the magistrate judge for further proceedings.

SO ORDERED.

February 25, 2019.


SIDNEY A. FITZWATER
SENIOR JUDGE